

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED, a Japanese
corporation, and FUJITSU
MICROELECTRONICS AMERICA, INC., a
California corporation,

No. C 06-6613 CW

Plaintiffs,

v.

NANYA TECHNOLOGY CORP., a Taiwanese
corporation, and NANYA TECHNOLOGY
CORP., U.S.A., a California
corporation,

Defendants.

KLA-TENCOR CORP.,

No. C 08-1254 CW

Plaintiff,

v.

FUJITSU LIMITED and FUJITSU
MICROELECTRONICS AMERICA, INC.,

ORDER APPOINTING
DAVID A. HODGES
AS COURT'S EXPERT

Defendants.

On May 5, 2008, the Court provided Dr. David A. Hodges with
instructions concerning his potential duties as the Court's expert

1 witness. Having consented to serve as the Court's expert and to
2 comply with those instructions, and having identified no conflict
3 of interest that would prevent him from objectively and
4 dispassionately discharging his duties,¹ Dr. Hodges is hereby
5 appointed the Court's expert in the above-captioned matters.

6 IT IS SO ORDERED.

7 Dated: 5/19/08



8 CLAUDIA WILKEN
9 United States District Judge

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United States District Court
For the Northern District of California

¹Dr. Hodges' consent and his responses to the Disclosure Form are attached as an exhibit to this order.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED ET AL et al,

Case Number: CV06-06613 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

NANYA TECHNOLOGY CORP. ET AL et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 19, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David A. Hodges
1272 Queens Rd.
Berkeley, CA 94708-2141

Dated: May 19, 2008

Richard W. Wicking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FUJITSU LIMITED, a Japanese
corporation, and FUJITSU
MICROELECTRONICS AMERICA, INC., a
California corporation,

No. C 06-6613 CW

Plaintiffs,

v.

NANYA TECHNOLOGY CORP., a Taiwanese
corporation, and NANYA TECHNOLOGY
CORP., U.S.A., a California
corporation,

Defendants.

KLA-TENCOR CORP.,

No. C 08-1254 CW

Plaintiff,

v.

FUJITSU LIMITED and FUJITSU
MICROELECTRONICS AMERICA, INC.,

Defendants.

ORDER CONCERNING
DUTIES AND
INSTRUCTIONS FOR
COURT-APPOINTED
EXPERT DR. DAVID
A. HODGES

If Dr. David A. Hodges consents, the Court will appoint him as
its expert witness. See Fed. R. Evid. 706. As the Court-appointed

1 expert, Dr. Hodges shall serve as a neutral, independent expert on
2 behalf of the Court on the technology at issue in this case with
3 respect to all patents-in-suit. His duties shall include the
4 following: (i) to provide a basic tutorial to the Court and the
5 jury on the underlying technology at issue in this case related to
6 all of the patents-in-suit; (ii) to provide a tutorial, expert
7 analysis and opinions as to the claim construction issues in this
8 case related to all patents-in-suit; and (iii) to provide expert
9 analysis and opinions as to the technical issues in this case
10 related to all patents-in-suit, including issues concerning
11 infringement and validity of the asserted claims of all
12 patents-in-suit.

13 Dr. Hodges will be provided with various materials to use as
14 resources when forming his opinions. Some materials are available
15 now and will be provided within five days of the entry of an order
16 appointing him. Other materials will be provided on a rolling
17 basis as they become available during the course of the litigation.
18 The parties believe that these materials may be helpful for Dr.
19 Hodges to consider for the purposes of forming his opinions. He is
20 not limited to these materials, and may request additional
21 information if he believes that it is necessary. He may give these
22 materials as much weight and consideration as he believes in his
23 professional judgment is required.

24 Copies of the following materials will be provided to Dr.
25 Hodges within five days of the entry of an order appointing him, in
26 organized binders that are labeled and tabbed: (i) all
27 patents-in-suit, (ii) the file histories of all patents-in-suit;

1 (iii) Plaintiffs' Patent Local Rule 3-1 Disclosure of Asserted
2 Claims and Preliminary Infringement Contentions, dated March 12,
3 2007; (iv) Plaintiffs' First Supplemental Patent Local Rule 3-1
4 Disclosure of Asserted Claims and Preliminary Infringement
5 Contentions, dated April 4, 2007; (v) Defendants' Preliminary
6 Invalidity Contentions, dated April 30, 2007; (vi) Defendants'
7 First Amended Preliminary Invalidity Contentions, dated June 27,
8 2007; (vii) Defendants' Supplemental Preliminary Invalidity
9 Contentions, dated January 22, 2008; (viii) Defendants' Patent
10 Local Rule 3-1 Disclosure of Asserted Claims and Preliminary
11 Infringement Contentions, dated March 12, 2007; (ix) Plaintiffs'
12 Preliminary Invalidity Contentions, dated April 30, 2007;
13 (x) transcripts of all pertinent depositions taken thus far; and
14 (xi) the up-to-date and all continuing correspondence to and from
15 the United States Patent and Trademark Office (USPTO) as it becomes
16 available regarding reexaminations of all patents-in-suit.

17 During the course of the litigation, the parties will provide
18 more materials to Dr. Hodges, as they become available. A few
19 examples of these materials are as follows. One, the Court expects
20 that the parties will submit additional infringement and invalidity
21 contentions. Two, the opening reports of the parties' experts are
22 due on 11/12/08 and the rebuttal expert reports are due on 12/2/08.
23 Three, the opening, opposition, reply and sur-reply briefs on claim
24 construction are due on 1/12/09, 2/2/09, 2/23/09 and 3/5/09,
25 respectively. On or about the same dates that the parties exchange
26 the above materials with each other, or file them with the Court,
27 copies shall be sent to Dr. Hodges. Similarly, deposition
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1 transcripts of the parties' experts and additional pertinent fact
2 witnesses will be provided to Dr. Hodges on or about the same dates
3 that they become available.

4 The parties will send the documents to Dr. Hodges jointly. If
5 the parties disagree about the propriety of providing a certain
6 document or thing to Dr. Hodges, the parties will seek the Court's
7 assistance and neither party shall provide that document or thing
8 to Dr. Hodges until and unless the Court has resolved the issue.

9 Dr. Hodges may look to the expert reports and the deposition
10 transcripts of the parties' experts for guidance as to what the
11 experts and the parties believe are the key issues to be addressed
12 in this case. However, it is not his role to critique the parties'
13 experts. His conclusions are to be his own independent opinions.
14 The parties will provide him with a copy of the model jury
15 instructions for patent cases here in the Northern District of
16 California. The basic law regarding his tasks will be set out in
17 these instructions and Dr. Hodges shall abide by them. In
18 addition, he will have the opportunity to ask questions, as
19 described below, in the event that a patent law issue comes up that
20 was not addressed by these materials.

21 Dr. Hodges will need to attend the claim construction oral
22 hearing on March 26, 2009. Prior to the hearing, Dr. Hodges shall
23 review the parties' claim construction briefs. On or before April
24 13, 2009, Dr. Hodges shall provide the Court and the parties with
25 his advisory opinion on claim construction. The advisory opinion
26 shall include Dr. Hodges's proposed constructions of the disputed
27 claim terms and his reasoning for arriving at those constructions.

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1 Regarding the technical issues in this case, after reviewing
2 the materials provided to him, and conducting his own independent
3 analysis, Dr. Hodges will prepare an expert report, containing a
4 statement of his opinions and the reasons for his opinions. His
5 report should be sent to the parties by express mail no later than
6 May 15, 2009. Within a month following submission of Dr. Hodges's
7 expert report, the parties may ask him to appear for a deposition
8 at a time and location that is convenient to him. At the
9 deposition, the parties can ask him questions, and he will be given
10 the opportunity to explain his opinions in greater detail prior to
11 his testimony at trial. Each party may depose Dr. Hodges for up to
12 7 hours. In his expert report:

13 (i) Dr. Hodges will offer his opinion on infringement by
14 determining whether each and every element of the
15 asserted claims can be found in the accused products.
16 Each party's infringement contention chart will set out
17 its infringement theory on an element-by-element basis.
18 Similarly, the parties' expert reports will track this
19 element-by-element analysis. Dr. Hodges should conduct
20 his own independent analysis in the same manner as the
21 parties in this case.

22 (ii) Also, Dr. Hodges will offer an opinion on patent
23 invalidity due to anticipation, by determining whether or
24 not each and every element of one or more of the asserted
25 claims can be found in any one item of prior art. The
26 parties' invalidity contention charts will set out their
27 invalidity-due-to-anticipation theories on an
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1 element-by-element basis. Similarly, the parties' expert
2 reports will track this element-by-element analysis. Dr.
3 Hodges should conduct his own independent analysis on
4 anticipation in the same manner as the parties in this
5 case.

6 (iii) Additionally, Dr. Hodges will offer his opinion on
7 invalidity due to obviousness by determining whether or
8 not it would have been obvious to combine the teachings
9 of certain references to achieve the claimed invention.
10 The parties' invalidity contention charts will set out
11 their invalidity-due-to-obviousness theories on an
12 element-by-element basis. Similarly, the parties' expert
13 reports will track this element-by-element analysis. Dr.
14 Hodges should conduct his own independent analysis on
15 obviousness in the same manner as the parties in this
16 case.

17 Lastly, Dr. Hodges will testify at trial on his opinions. The
18 trial is scheduled to begin on July 13, 2009. The Court and the
19 parties will attempt to accommodate Dr. Hodges and to give him as
20 much advance notice as possible as to what day (or days) he will be
21 needed to testify. Trials are complex matters, however, involving
22 many witnesses, so flexibility will be required. The parties will
23 pay for all of Dr. Hodges's reasonable hotel and travel expenses.

24 Dr. Hodges may contact the Court, by calling its clerk at
25 (510) 637-3542, if questions come up or if he encounters difficulty
26 in accomplishing his assigned tasks. The clerk will arrange a
27 conference call with the attorneys. He may also contact the Court
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1 by letter, with a carbon copy to the parties, or by emailing the
2 clerk and "cc"-ing the parties. The clerk's email address is
3 sheilah_cahill@cand.uscourts.gov. In addition, Dr. Hodges may
4 contact the parties directly, by using the e-mail addresses that
5 they will provide to him, if he needs additional documents or other
6 information. Dr. Hodges, however, shall not contact only one
7 party, as it is important that both sides be given the chance to
8 communicate with him jointly if needed. The parties will set up a
9 conference call if necessary.

10 In order to accept this appointment, Dr. Hodges must give his
11 consent to serve as the Court-appointed expert in this case, and
12 must acknowledge his responsibility to discharge his duties in
13 accordance with the instructions set forth in this order, by
14 signing below and returning the signed original to the Court in the
15 enclosed envelope.

16 Dr. Hodges must also confirm that he has no conflict of
17 interest. Specifically, Dr. Hodges should provide the information
18 requested in the attached "Disclosure Form." He may provide this
19 information in the same envelope containing his consent.

20 Upon his agreement and the Court's appointment, the parties
21 will retain Dr. Hodges. Fujitsu and Defendants (Nanya and KLA)
22 shall equally share Dr. Hodges's fees and expenses. Each side will
23 deposit a retainer of \$20,000 in one of its counsel's trust
24 account. The parties shall disclose to Dr. Hodges the hourly rates
25 they are paying to their experts. Dr. Hodges may bill at his usual
26 hourly rate or at a rate commensurate with the rates paid to the
27 parties' expert witnesses.

1 IT IS SO ORDERED.

2 Dated: 5/5/08

3 Claudia Wilken
CLAUDIA WILKEN
United States District Judge

4
5
6 CONSENT

7 I consent to serve as the Court's expert in the cases of
8 Fujitsu Ltd. v. Nanya Technology Corp., No. C 06-6613, and KLA-
9 Tencor Corp. v. Fujitsu Ltd., No. C 08-1254, and will discharge my
10 duties in accordance with the instructions provided to me by the
11 Court.

12 Dated: 5/13/2008

13 David A. Hodges
DAVID A. HODGES

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15
16
17
18 DAVID A. HODGES
1272 QUEENS ROAD
BERKELEY, CA 94708

19 please use this
20 address for all
21 mail, express, etc.

22 Email:
23 hodges@eecs.berkeley.
24 edu
25 attachments are O.K.
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DISCLOSURE FORM

Please answer the following questions:

1. Do you presently provide any goods or services (paid or unpaid) to any entity on the Attached List? If yes, please explain in detail. *no*

2. Please provide a list of all semiconductor companies for which you have consulted or worked in the past four years, and for each state the nature of your work. *attached*

3. Have you or any member of your family to your knowledge ever had any professional, business or social relationship with any person on the Attached List? If yes, please explain in detail. *no*

4. Do you own any stock or have any other type of financial interest in any entity on the Attached List? If yes, please identify the entity(ies) involved. *no*

5. Have you been involved in a dispute related to intellectual property in the last five years? If yes, please explain in detail. *yes*

6. Have you ever served as an expert witness or consultant to any party or person on the Attached List? If yes, please explain in detail. *attached*

7. Please describe all contacts you have had with any person or entity on the Attached List related to this matter, and if such contacts were in writing, please attach copies of such writings to your response. *attached*

8. Please disclose any other matter that could cause a person aware of the facts and circumstances of this case to entertain a reasonable doubt that you would be impartial as the Court's expert. Any doubts you have as to whether to disclose a matter should be resolved in favor of disclosure.

Dated: 5/13/2008

David A. Hodges
DAVID A. HODGES

ATTACHED LIST

*negative, except
as noted*

Fujitsu Limited, Fujitsu Microelectronics America, Inc.

Nanya Technology Corp., Nanya Technology Corp. U.S.A.

KLA-Tencor Corp.

The law firm Milbank Tweed Hadley & McCloy LLP, including its attorneys Christopher Chalsen, Michael Murray, Lawrence Kass, Michael Kurzer, Blake Reese, Timothy Doyle, Stephen Kim, Chris Holm, Frank Bruno, Gregory Evans, Ping Gu, William Wallace, and Mark Scarsi

*Copies
attached*

The law firm Shore Chan Bragalone LLP, including its attorneys Michael Shore, Alfonso Chan, Jeffrey Bragalone, Joseph DePumpo, Patrick Conroy, Justin Kimble, Sherry Talton, Regina Holder, Sean Hsu, Derek Johnson, Patrick Traister, and Kumar Vinnakota

The law firm Fliesler Meyer LLP, including its attorneys Martin Fliesler and Rex Hwang

The law firm Howrey LLP, including its attorneys Henry Bunsow, K.T. Cherian, Robert Harkins, and Vinay Joshi

Inventors of the Nanya Technology Corp. patents-in-suit, including Tse-Yao Huang, Yun Sen Lai, Yi-Nan Chen, Hsien-Wen Liu, and Hui-Min Mao

Inventors of the Fujitsu Limited patents-in-suit, including Hiroyoshi Tomita, Tatsuya Kanda, Hiroshi Arimoto, Masao Taguchi, and Toshiya Uchida

Ellen Marcie Emas

Joe McKinney Muncy

John P. Kong

Rustan Hill

Ken Hurley

Vicky Tseng

Shigeru Kitano

Yuichi Sakoda

Pei Lin Pai

Su Lin Chin

Yu Ching Liu

Michael D. Bednarek

David Rahmer

The law firm Arent Fox LLP

The law firm Kratz Quintos & Hanson LLP

The law firm Kubovcik & Kubovcik

The law firm Pillsbury Winthrop Shaw Pittman LLP

Semiconductor Insights Inc.

JEDEC Solid State Technology Association (formerly known as Joint Electron Device Engineering Council).

IBM Corp.

Infineon Technologies AG, Infineon North America Corp.

Inotera Memories, Inc.

Qimonda AG, Qimonda North America Corp.

Rambus, Inc.

NEC Electronics Corp.

Samsung Electronics Co.

Texas Instruments Inc.

David A. Hodges
1272 Queens Road
Berkeley, CA 94708

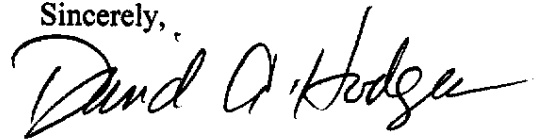
May 13, 2008

Clerk, U.S. District Court
1301 Clay Street, Suite 400S
Oakland, CA 94612-5212

Following are my positive responses to items on the attached disclosure form.

- Item 2. All semiconductor companies for which I have consulted or worked in the past 4 years:
- Silicon Image, Inc. (SIMG) Board of Directors 1998 to May 2007
 - Siemens Technology to Business Center, Berkeley CA Dec. 2006-present
 - Technical Advisory Board; little semiconductor content
 - Sandia National Laboratories, Albuquerque, NM 2002-2006
 - Advisory panel on new semiconductor process facility
- Item 5. Analog Devices, Inc./Proskauer Rose, LLP October 2007-March 2008
- Expert witness in a patent infringement suit regarding digital couplers; settled before trial. U.S. Federal court, Boston. Other party: Silicon Labs, Inc.
- Item 6. I served as an expert witness for Texas Instruments/Jones Day LLP for proceedings in U.S. Trade Court in 1987-88, on infringement of TI's DRAM patents. Fujitsu and Samsung were among the multiple defendants. The court ruled for Texas Instruments.
- Item 7. Copies attached.

Sincerely,



Disclosure form
item 7.

David A. Hodges

From: Kim, Stephen [SKim@milbank.com]
Sent: Friday, March 07, 2008 6:23 PM
To: David A Hodges
Subject: RE: court appointed witness

Prof. Hodges,

Thank you for your reply. Just to give you a quick review of our need for an expert in the upcoming litigation, we are representing Fujitsu Limited in a patent infringement case against Nanya Technology Corp. and KLA Tencor. We require an expert in DRAM technology to act as a "court appointed expert" whose function would be to assist the Court in understanding the technical aspects of the case. Unlike an "expert witness", you would not be assisting either side in particular.

The bulk of the time commitment would be approximately six months from now and would require some travel within California. However, most of the work can be done remotely.

The patents that are at issue are as follows:

U.S. Patent No. 4,801,989

U.S. Patent No. 5,227,996

U.S. Patent No. 6,104,486

U.S. Patent No. 6,292,428

U.S. Patent No. 6,320,819

U.S. Patent No. 6,790,765

U.S. Patent No. 6,225,187

U.S. Patent No. 6,426,271

These patents can be viewed through <http://www.google.com/patents>. If you prefer, we can send you PDF files of the patents, but the size can sometimes cause problems when sending them via email depending on your mailbox. If you have any problems or questions, please email me.

Please look over the patents to determine if you are familiar with the subject matter. Also, please send us a copy of your curriculum vitae and billing rate so that we may look over your DRAM experience and look for any potential conflicts of interest.

We hope to hear from you soon.

Thanks again,

Stephen Kim

5/13/2008

Milbank
Intellectual Property/Litigation
Stephen C. Kim
Not Yet Admitted in NY
1 Chase Manhattan Plaza
New York, NY 10005
T: (212) 530-5063 F: (212) 822-5063
skim@milbank.com
www.milbank.com

From: dahodges9@gmail.com [mailto:dahodges9@gmail.com] **On Behalf Of** David A Hodges
Sent: Friday, March 07, 2008 9:11 PM
To: Kim, Stephen
Subject: court appointed witness

Dear Mr. Kim,

I picked up your phone message of Thursday afternoon late today. Also, Ms. O'Neill forwarded to me your email msg to her. Please send me the US patent numbers in dispute. I will review them promptly, then email you if feel qualified as a candidate for this assignment.

I previously served as a witness for Texas Instruments in DRAM litigation before the US Trade Court. That was in 1988. My recent experience as an expert witness is in other areas of semiconductor product design.

-David Hodges hodges@eecs.berkeley.edu is best way to reach me.

IRS Circular 230 Disclosure: U.S. federal tax advice in the foregoing message from Milbank, Tweed, Hadley & McCloy LLP is not intended or written to be, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed regarding the transactions or matters addressed. Some of that advice may have been written to support the promotion or marketing of the transactions or matters addressed within the meaning of IRS Circular 230, in which case you should seek advice based on your particular circumstances from an independent tax advisor.

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5/13/2008

David A. Hodges

From: Kim, Stephen [SKim@milbank.com]
Sent: Monday, March 17, 2008 4:44 PM
To: David A. Hodges
Cc: Bruno, Frank A.
Subject: RE: court appointed witness

Prof. Hodges,

Thank you for sending your CV. After reviewing our potential court appointed experts, we feel that you are the most qualified for the position and therefore we are recommending you to the Court as our top candidate. The opposing counsel for Nanya will also be recommending an expert and it will ultimately be the Court's decision who is selected. I will keep you updated as much as possible and let you know when we have an idea as to a time frame for the final selection by the Court. Please let me know if you have any questions.

Thank you,

Stephen Kim

Milbank
Intellectual Property/Litigation
Stephen C. Kim
Not Yet Admitted In NY
1 Chase Manhattan Plaza
New York, NY 10005
T: (212) 530-5063 F: (212) 822-5063
skim@milbank.com
www.milbank.com

From: David A. Hodges [mailto:dahodges9@gmail.com]
Sent: Sunday, March 09, 2008 5:13 PM
To: Kim, Stephen
Subject: RE: court appointed witness

Mr. Kim,

I reviewed the patents. I am familiar with the technical matters covered in those patents and believe I could assist the court in understanding related technical issues. Attached is my curriculum vitae and a list of my publications and patents. It has been many years since I published or patented on semiconductor memory, but I taught that topic at Berkeley for two decades. I served in the past as an expert on DRAM and related manufacturing technologies for Texas Instruments and others.

Currently I am under contract as a consultant to Siemens Corporate Research on a range of technology topics, not including DRAM. I recently completed service as an expert for Analog Devices, Inc. in patent infringement litigation not related to DRAM or any memory technology. (That matter was settled before trial.)

5/13/2008

I don't believe I have any potential conflict of interest with respect to subject matter represented by the patents you listed.

If appointed, I would bill at the rate of \$400/hour for preparation and appearances, plus travel expenses (coach), and \$200/hour for travel time. This was the rate I received in my recent service for Analog Devices.

-David Hodges

From: Kim, Stephen [mailto:SKim@milbank.com]
Sent: Friday, March 07, 2008 6:23 PM
To: David A Hodges
Subject: RE: court appointed witness

Prof. Hodges,

Thank you for your reply. Just to give you a quick review of our need for an expert in the upcoming litigation, we are representing Fujitsu Limited in a patent infringement case against Nanya Technology Corp. and KLA Tencor. We require an expert in DRAM technology to act as a "court appointed expert" whose function would be to assist the Court in understanding the technical aspects of the case. Unlike an "expert witness", you would not be assisting either side in particular.

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U.S. Patent No. 6,225,187

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Please look over the patents to determine if you are familiar with the subject matter. Also, please send us a copy of your curriculum vitae and billing rate so that we may look over your DRAM experience and look for any potential conflicts of interest.

We hope to hear from you soon.

Thanks again,

5/13/2008

Stephen Kim

Milbank
Intellectual Property/Litigation
Stephen C. Kim
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5/13/2008

David A. Hodges

From: Kass, Lawrence [LKass@milbank.com]
Sent: Friday, April 04, 2008 10:22 AM
To: David A. Hodges; hodges@eecs.berkeley.edu
Cc: Chalsen, Christopher; Murray, Michael; Michael Shore; Alfonso G Chan; Harkins, Robert; Joshi, Vinay; Cherian, K.T.; Justin Kimble; Sherry Talton; F-N-wg@milbank.com
Subject: Court-Appointed Expert -- Fujitsu v Nanya v KLA-Tencor (4:06-CV-06613 (CW))
Attachments: 2008-04-04 Kass to Hodges (scan).pdf

Dear Dr. Hodges:

Please see attached letter. A text version is provided below for convenience.

Best regards,
Larry Kass

<<2008-04-04 Kass to Hodges (scan).pdf>>

Dear Dr. Hodges:

We are writing to advise you that yesterday Judge Wilken chose you as the court-appointed expert for all patents in suit except the '486 patent, for which she "provisionally" chose you as the court-appointed expert. With respect to the '486 patent, Judge Wilken may allow some follow-up inquiries -- agreed-upon in advance by all parties -- regarding your comfort level with ellipsometry and related documents, and regarding conflicts clearance.

We have advised Nanya and KLA that, because you have now been chosen as the court-appointed expert, no party can contact you ex parte (i.e., without including the other parties and the Court). Accordingly, I have included opposing counsel on this letter (as cc), and the letter is being concurrently lodged with the Court. If any party contacts you ex parte (or has done so since yesterday), we would appreciate if you could please report such contact to the other parties and the Court.

The parties and the Court will be coordinating and following up with you shortly.

Very truly yours,
Lawrence T. Kass

cc: Judge Wilken (via hand delivery and ECF)
Counsel for All Parties (via email and ECF)

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5/13/2008

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MILBANK, TWEED, HADLEY & McCLOY LLP

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April 4, 2008

VIA EMAIL

David A. Hodges
Professor of Electrical Engineering and Computer Sciences
516 Cory Hall #1770
Berkeley, CA 94720-1770

Re: *Fujitsu Limited v. Nanya Technology Corp.*, No. 4:06-cv-06613 (N.D. Cal.)
KLA-Tencore Corp. v. Fujitsu Limited, No. 4:08-cv-01254 (N.D. Cal.)

Dear Dr. Hodges:

We are writing to advise you that yesterday Judge Wilken chose you as the court-appointed expert for all patents in suit except the '486 patent, for which she "provisionally" chose you as the court-appointed expert. With respect to the '486 patent, Judge Wilken may allow some follow-up inquiries -- agreed-upon in advance by all parties -- regarding your comfort level with ellipsometry and related documents, and regarding conflicts clearance.

We have advised Nanya and KLA that, because you have now been chosen as the court-appointed expert, no party can contact you ex parte (i.e., without including the other parties and the Court). Accordingly, I have included opposing counsel on this letter (as cc), and the letter is being concurrently lodged with the Court. If any party contacts you ex parte (or has done so since yesterday), we would appreciate if you could please report such contact to the other parties and the Court.

The parties and the Court will be coordinating and following up with you shortly.

Very truly yours,



Lawrence T. Kass

cc: Judge Wilken (via hand delivery and ECF)
Counsel for All Parties (via email and ECF)